

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

PAULA CARRIE ROGERS,

Plaintiff,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants.

No. 2:24-cv-00475-TLN-CKD (PS)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff Paula Carrie Rogers paid the filing fee and filed this civil action without counsel. This matter is before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c)(21).

Presently before the Court is defendants' City of Elk Grove, Bobby Davis, Tina Durham, and Tisha Smith's (the "City defendants") motion to dismiss plaintiff Paula Carrie Rogers's complaint (ECF No. 8), and defendant County of Sacramento's (the "County defendant") motion to dismiss plaintiff's complaint (ECF No. 10). Also before the Court are plaintiff's motions for judgment on the pleadings (ECF Nos. 23, 30, 31), and plaintiff's three requests for judicial notice (ECF Nos. 32, 39, 42). The Court held a hearing on December 11, 2024, where plaintiff appeared pro se, attorneys Jonathan Hobbs and Brianne O'Sullivan appeared for the City defendants, and attorney Denny Yu appeared for the County defendant.

1 In the complaint, plaintiff alleges defendants discriminated against her in violation of
2 federal and state laws during a traffic stop because of her race. Pursuant to Rule 12(b)(6) and
3 Rule 8 of the Federal Rules of Civil Procedure, defendants move the Court for an order
4 dismissing the complaint. For the reasons set forth below, the County defendant's motion to
5 dismiss should be granted and the City defendants' motion to dismiss should be granted in part
6 and denied in part. Because defendants had pending motions to dismiss at the time plaintiff filed
7 her motions for judgment on the pleadings, and because the motions for judgment on the
8 pleadings are untimely, the motions for judgment on the pleadings should also be denied.

9 **I. Request for Judicial Notice**

10 Plaintiff filed three requests for judicial notice: the first on October 8, 2024, the second
11 on November 4, 2024, and the third on November 26, 2024. (ECF Nos. 32, 39, 42.) Plaintiff
12 requests that the court "take judicial notice of the rule of law set forth in the Memorandum of
13 Points and authorities" and apply it to any ruling by the court on defendants' pending motions.
14 (ECF Nos. 32 at 2, 39 at 2, 42 at 2.) On a motion to dismiss, a court may consider documents
15 attached to the complaint, documents incorporated by reference in a complaint, or documents
16 subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Federal
17 Rule of Evidence 201 permits courts to take judicial notice of factual material "(1) generally
18 known within the trial court's territorial jurisdiction; or (2) can be accurately and readily
19 determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid.
20 201(b). Additionally, courts may take notice of "matters of public record." *Reyn's Pasta Bella,*
21 *LLC. v. Visa USA, Inc.*, 442 F.3d 741,746 n.6 (9th Cir. 2006).

22 To the extent plaintiff is requesting judicial notice of the case law and relevant statutes
23 cited in the requests, the Court denies the requests as moot because the Court does not need to
24 judicially notice case law or relevant statutes or regulations to consider them. *De Anda v. Ford*
25 *Motor Co.*, 668 F. Supp. 3d 976, 983 (C.D. Cal. 2023); *Anselmo v. County of Shasta, Cal.*, 873 F.
26 Supp. 2d 1247, 1254 n.4 (E.D. Cal. 2012).

27 Plaintiff also appears to be attempting to use these requests to further respond to
28 defendants' motions to dismiss and to support her motion for judgment on the pleadings. Plaintiff

1 already opposed each of defendants' motions to dismiss on March 20, 2024 (ECF Nos. 11, 12),
 2 and the matters were deemed submitted on April 24, 2024 (ECF No. 19). Plaintiff also had the
 3 ability to file a reply to defendants' oppositions to her motions for judgment on the pleadings but
 4 chose not to do so. *See* Local Rule 230(d) ("No later than ten (10) days after the opposition was
 5 filed, the moving party may serve and file a reply to any opposition filed by a responding party").
 6 However, the court has reviewed the motions and does not see any new argument contained
 7 within that would change the court's ruling on the pending motions. Plaintiff's requests for
 8 judicial notice (ECF Nos. 32, 39, 42) are denied.

9 **II. Procedural Background**

10 Plaintiff filed a complaint on February 15, 2024, and paid the filing fee. (ECF No. 1.)
 11 The complaint names five defendants: the County of Sacramento; the City of Elk Grove¹; Bobby
 12 Davis, Chief of Police; Detective Tina Durham; and Officer Tisha Smith. On March 18, 2024,
 13 the City defendants and the County defendant each moved to dismiss plaintiff's complaint for
 14 failure to state a claim. (ECF Nos. 8, 10.) Both motions are fully briefed. (ECF Nos. 11, 12, 15,
 15 16.) The hearing date originally set for each motion was vacated on the court's own motion.
 16 (ECF No. 19.)

17 Plaintiff also filed a motion for judgment on the pleadings on September 24, 2024. (ECF
 18 No. 23.) This motion was improperly noticed before Chief District Judge Troy L. Nunley, and
 19 the hearing set before him was accordingly vacated. (ECF No. 24.) Plaintiff filed two additional
 20 motions for judgment on the pleadings (ECF Nos. 30, 31), both also improperly noticed. All

21 ¹ Plaintiff names the City of Elk Grove on the cover of her complaint as a defendant, however the
 22 body of the complaint discusses allegations against the Elk Grove Police Department. (*See, e.g.*,
 23 ECF No. 1 at 5.) The City defendants do not take issue with this and address the claims as if they
 24 were brought against the City of Sacramento. (*See* ECF No. 8.) Because the police department is
 25 considered an entity of the city, the City of Elk Grove is an appropriate defendant in this case.
 26 *See Gunn v. Stanton Correctional Facility*, 2021 WL 1402141, at *2 (E.D. Cal. Apr. 4, 2021);
 27 *Cantu v. Kings County*, 2021 WL 411111, at * 1 (E.D. Cal. Feb. 5. 2021) (recognizing split
 28 within district courts regarding whether naming a sheriff's department is redundant or duplicative
 of the municipal entity; but finding that weight of authority finds that claims against a
 municipality and its respective police departments are treated as claims against the municipality
 and not subject to suit under 1983); *see also Kamath v. United States Dep't of Homeland
 Security*, 2024 WL 1077328, at *2 (N.D. Cal. Mar. 12, 2024) (agreeing to substituting the city
 and county in place of the police department as a defendant where plaintiff did not object).

1 defendants have opposed the motions for judgment on the pleadings.² (ECF Nos. 28, 41.)

2 Plaintiff did not file any reply.

3 On the court's own motion, defendants' motions to dismiss and plaintiff's motions for
4 judgment on the pleadings were set for an in person hearing before the undersigned on December
5 11, 2024. (ECF No. 40.)

6 **III. Legal Standards**

7 **A. Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6)**

8 Dismissal under Rule 12(b)(6) may be warranted for "the lack of a cognizable legal theory
9 or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica*
10 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). In evaluating whether a complaint states a claim
11 on which relief may be granted, the court accepts as true the allegations in the complaint and
12 construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*,
13 467 U.S. 69, 73 (1984); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989).

14 "[R]ecitals of the elements of a cause of action, supported by mere conclusory statements,
15 do not suffice" to state a valid claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A
16 complaint must do more than allege mere "labels and conclusions" or "a formulaic recitation of
17 the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In
18 order to state a valid claim for relief, a plaintiff must allege "enough facts to state a claim to relief
19 that is plausible on its face." *Id.* at 570. A claim that is plausible on its face has sufficient factual
20 content to allow a reasonable inference that the defendant is liable for the misconduct alleged.
21 *Iqbal*, 556 U.S. at 678. This plausibility standard "asks for more than a sheer possibility that a
22 defendant has acted unlawfully." *Id.*

23 The court must construe a pro se pleading liberally to determine if it states a claim and,
24 prior to dismissal, tell a plaintiff of deficiencies in her complaint and give plaintiff an opportunity

25 _____
26 ² The County defendant filed its opposition to plaintiff's motions for judgment on the pleadings
27 on November 26, 2024. (ECF No. 41.) This is more than fourteen days after plaintiff's motions
28 were filed on September 9, 2024, and October 8, 2024. See Local Rule 230(c) ("Opposition, if
any, to the granting of the motion shall be in writing and shall be filed and served no later than
fourteen (14) days after the motion was filed."). However, the Court will consider the County
defendant's opposition for the sake of judicial economy.

1 to cure them if it appears at all possible that the plaintiff can correct the defect. *See Lopez v.*
 2 *Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc); *accord Balistreri*, 901 F.2d at 699
 3 (stating that “pro se pleadings are liberally construed, particularly where civil rights claims are
 4 involved”); *see also Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (stating that courts
 5 continue to construe pro se filings liberally even when evaluating them under the standard
 6 announced in *Iqbal*). Nevertheless, courts are not required to accept as true allegations that are
 7 merely conclusory, unwarranted deductions of fact, or unreasonable inferences. *Sprewell v.*
 8 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

9 **B. Motion for Judgment on the Pleadings**

10 Under Federal Rule of Civil Procedure 12(c), “a party may move for judgment on the
 11 pleadings” after the pleadings are closed “but early enough not to delay trial.” A motion for
 12 judgment on the pleadings pursuant to Rule 12(c) challenges the legal sufficiency of the opposing
 13 party’s pleadings. *See, e.g., Westlands Water Dist. v. Bureau of Reclamation*, 805 F.Supp. 1503,
 14 1506 (E.D. Cal. 1992).

15 A motion for judgment on the pleadings is proper if “the moving party clearly establishes
 16 on the face of the pleadings that no material issue of fact remains to be resolved and that it is
 17 entitled to judgment as a matter of law.” *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*,
 18 896 F.2d 1542, 1550 (9th Cir. 1989). Judgment on the pleadings is also proper when there is
 19 either a “lack of a cognizable legal theory” or the “absence of sufficient facts alleged under a
 20 cognizable legal theory.” *Balistreri*, 901 F.2d at 699. In reviewing a Rule 12(c) motion, “all
 21 factual allegations in the complaint [must be accepted] as true and construe[d] . . . in the light
 22 most favorable to the non-moving party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).
 23 “Judgment on the pleadings is properly granted when there is no issue of material fact in dispute,
 24 and the moving party is entitled to judgment as a matter of law.” *Id.*

25 **C. Leave to Amend**

26 If the court finds that a complaint or claim should be dismissed for failure to state a claim,
 27 the court has discretion to dismiss with or without leave to amend. *See Davis v. Miranda*, 2020
 28 WL 1904784, at *2 (E.D. Cal. Apr. 17, 2020). Leave to amend should be freely granted when

1 justice so requires, Fed. R. Civ. P. 15(a), and if it appears possible that the defects in the
 2 complaint could be corrected, especially if a plaintiff is pro se, *Lopez*, 203 F.3d at 1130-31; *Cato*
 3 *v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given leave to
 4 amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that
 5 the deficiencies of the complaint could not be cured by amendment.” (citation omitted)).
 6 However, if, after careful consideration, it is clear that a claim cannot be cured by amendment,
 7 the court may dismiss without leave to amend. *Cato*, 70 F.3d at 1105-06; *Cal. Architectural*
 8 *Bldg. Prod. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1472 (9th Cir. 1987) (“Valid reasons
 9 for denying leave to amend include undue delay, bad faith, prejudice, and futility.”). The Court
 10 will address whether plaintiff has leave to amend each individual claim.

11 **IV. Discussion**

12 **A. Allegations in the Complaint**

13 In the complaint, plaintiff makes general allegations that the County defendant and the Elk
 14 Grove Police Department engage in and condone “a continuing pattern and practice of race-based
 15 stops, detentions and searches of African-American motorists traveling in the public streets of Elk
 16 Grove and of the State of California.” (ECF No. 1 at 3.) She alleges that “motorists of color,
 17 particularly African-American motorists, are targeted and subjected to these practices at grossly
 18 disproportionate rates.” (*Id.* at 8.) Plaintiff claims that “all Defendants and [Elk Grove Police
 19 Department] supervisors have been aware [Elk Grove Police Department] officers are engaging in
 20 racial profiling, yet have failed and refused to stop it, thereby showing deliberate indifference to
 21 the rights of African-American motorists.” (*Id.* at 9.)

22 Specifically, plaintiff alleges that on July 17, 2023, defendant Durham, driving an
 23 unmarked vehicle, pulled plaintiff and her sister over while they were driving, “under the
 24 suspicion of reckless driving and a red light violation.”³ (*Id.*) Both plaintiff and her sister were
 25 asked to get out of the car while defendant Durham searched the car and trunk, and plaintiff’s
 26 sister’s purse. (*Id.*) Plaintiff’s car was impounded. (*Id.*) The Elk Grove Police Department did

27
 28 ³ At the hearing held before the undersigned on December 11, 2024, plaintiff informed the Court
 that she was cited for reckless driving and has an ongoing proceeding in California state court.

1 not allow plaintiff's sister to take possession of the car, and plaintiff alleges that the Elk Grove
 2 Police Department viewed her license and returned it damaged. (*Id.*) Plaintiff alleges that she
 3 was racially profiled by defendant Durham, who she alleges was "observing traffic during the day
 4 when the racial identity of a driver is more easily identified," and that defendant Durham pulled
 5 plaintiff over "after harassing and tailgating vehicle driven by Plaintiff." (*Id.*)

6 Regarding defendant Davis, plaintiff states that he "failed adequately to train [Elk Grove
 7 Police Department] personnel and to promulgate appropriate policies to prevent race-based
 8 vehicular stops." (*Id.* at 5.) Plaintiff also alleges that defendant Davis "directly or indirectly
 9 participated in the authorization, planning and supervision of the actions of the individual [Elk
 10 Grove Police Department] officers involved in this case." (*Id.*)

11 Regarding defendant Smith, plaintiff only states that "Officer Smith was involved in the
 12 stop of Plaintiff." (*Id.* at 6.)

13 Plaintiff alleges fifteen different federal and state claims: (1) "Violation of Title VI of the
 14 Civil Rights Act of 1964" and 42 U.S.C. § 1983; (2) intentional race discrimination under Title
 15 VI; (3) violation of the Fourteenth Amendment and § 1983; (4) violation of the Fourth and
 16 Fourteenth Amendment and § 1983; (5) violation of the commerce clause and the privileges and
 17 immunities clauses of Article IV of the United States Constitution and the Fourteenth
 18 Amendment; (6) violation of Title VI and the Omnibus Crime Control and Safe Street Acts of
 19 1968; (7) violation of 42 U.S.C. §1981; (8) violation of 42 U.S.C. § 1986; (9) violation of
 20 California Government Code sections 11135 and 11139; (10) violation of the California
 21 Constitution Article 1, § 7 and (11) § 13; (12) violation of California Civil Code section 52.1(b);
 22 (13) intentional infliction of emotional distress; (14) negligent infliction of emotional distress;
 23 and (15) declaratory relief.⁴ (*Id.* at 11-20.)

24
 25 ⁴ Plaintiff's fifteenth claim is for declaratory relief. "Declaratory relief should be denied when it
 26 will neither aid in clarifying and settling legal relations in issue nor terminate the proceedings and
 27 accord the parties relief from the uncertainty and controversy they faced." *Greater Los Angeles*
 28 *Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1112 (9th Cir. 1987). Here, declaratory relief
 would not serve any prospective purpose because the issues are too fact-specific to be helpful.
 Further, if this action reaches trial and the jury returns a verdict in favor of plaintiff, that verdict
 would be a finding that plaintiff's constitutional rights were violated. Accordingly, a declaration

B. The County Defendant's Motion to Dismiss (ECF No. 10)

The County defendant moves to dismiss plaintiff's complaint on the grounds that plaintiff's allegations are conclusory and do not implicate the County. (ECF No. 10-1 at 5.) The County defendant argues that plaintiff "does not make specific factual allegations regarding exactly *how* Defendant Sacramento County allegedly engages in and condones race-based stops by another agency over which it has no control." (*Id.*) Further the County defendant alleges that plaintiff's complaint does not allege that the County defendant was involved in any misconduct during the July 17, 2023, stop. (*Id.*) Finally, the County defendant argues that it is not vicariously liable for the City of Elk Grove.

In plaintiff’s complaint, the only references to defendant County of Sacramento are general allegations that defendant County of Sacramento engaged in and condoned a “continuing pattern and practice of race-based stops, detentions and searches of African-American motorists traveling on the public streets of Elk Grove and of the State of California.” (ECF No. 1 at 3.) Plaintiff also alleges that defendant County of Sacramento “condone[s] and accept[s] the procedures and policies practiced by the Elk Grove Police Department.” (*Id.*) Plaintiff’s complaint has not alleged facts sufficient to state any claim against the County defendant. *See Iqbal*, 556 U.S. at 678. While plaintiff brings almost all of her fifteen claims against “defendants” as a group, plaintiff has not demonstrated how the County defendant specifically violated her rights.

To the extent plaintiff attempts to hold the County defendant liable for violations of the Fourth and Fourteenth Amendments under 42 U.S.C. § 1983, these claims also fail under *Monell*. Under *Monell v. Dep’t of Soc. Servs. Of City of New York*, 436 U.S. 658 (1978), “[a] government entity may not be held liable under 42 U.S.C. § 1983, unless a policy, practice, or custom of the entity can be shown to be a moving force behind a violation of constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monell*, 436 U.S. at 694). “[A] policy is ‘a deliberate choice to follow a course of action . . . made from among various alternatives by

that defendants violated plaintiff's rights is unnecessary. Plaintiff's claim for declaratory relief should therefore be dismissed.

1 the official or officials responsible for establishing final policy with respect to the subject matter
2 in question.”” *Oviatt By and Through Waugh v. Pearce*, 954 F.2d 1470, 1477 (9th Cir. 1992)
3 (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)). “A ‘custom’ for purposes of
4 municipal liability is a ‘widespread practice that, although not authorized by written law or
5 express municipal policy, is so permanent and well-settled as to constitute a custom or usage with
6 the force of law.’” *Young v. City of Visalia*, 687 F. Supp. 2d 1141, 1147 (E.D. Cal. 2009)
7 (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)). “Liability for improper
8 custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices
9 of sufficient duration, frequency and consistency that the conduct has become a traditional
10 method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). After
11 establishing one of the methods of liability, “a plaintiff must also show that the circumstance was
12 (1) the cause in fact and (2) the proximate cause of the constitutional deprivation.” *Id.*

13 Here, plaintiff has not alleged more than general statements that the County engaged in a
14 pattern and practice of race-based stops and detentions. Plaintiff has not described any specific
15 policies or provided examples of instances where the County defendant engaged in stops or
16 detentions based on race. One or two incidents is not enough to establish a policy or custom. *See*
17 *Morales v. City of McFarland*, 2024 WL 99806, at *5 (E.D. Cal. Jan. 9, 2024). Plaintiff needs to
18 allege more than general statements that the County engaged in race-based stops and detentions
19 and provide examples of specific policies or practices the County followed. The conclusory
20 allegations in plaintiff’s complaint are not enough to satisfy the *Monell* doctrine. *Iqbal*, 556 U.S.
21 at 678.

22 Plaintiff has also not alleged that any County employee was involved in the incident that
23 occurred on July 17, 2023. Plaintiff alleges that she was stopped by a City of Elk Grove police
24 detective, not a Sacramento County official. Plaintiff was informed of the deficiencies of her
25 complaint by defendant Sacramento County’s motion to dismiss, and did not offer more facts or
26 attempt to correct these deficiencies in her opposition to the motion. When asked whether she
27 would like to share any additional facts about her claim during the December 11, 2024, hearing,
28 she said that her claim stands on her pleading. Accordingly, plaintiff has not alleged facts

1 sufficient to show a well-settled pattern, custom, or practice of race-based stops or detentions.
2 Therefore, the motion to dismiss defendant County of Sacramento should be granted. Because all
3 of plaintiff's allegations involve the City of Elk Grove and City officials, it appears any
4 amendment would be futile, and it is recommended that defendant Sacramento County's motion
5 to dismiss (ECF No. 10) be granted without leave to amend.

6 **C. The City Defendants' Motion to Dismiss (ECF No. 8)**

7 **1. Defendant Davis**

8 In the City defendants' motion to dismiss, they allege that plaintiff fails to state a claim
9 against defendant Davis. (ECF No. 8 at 14.) The City defendants argue that plaintiff's complaint
10 does not provide defendants notice of what legal claims are asserted against defendant Davis and
11 that the complaint conclusively states that defendant Davis failed to adequately train police
12 officers. (*Id.*) In her complaint, plaintiff initially states that she only sues defendant Davis in his
13 official capacity, but then later says that she sues “[a]ll of the defendants” in their individual and
14 official capacities. (ECF No. 1 at 7.) Plaintiff alleges that defendant Davis did not properly train
15 personnel or “promulgate appropriate policies to prevent race-based vehicular stops.” (ECF No. 1
16 at 5.) Plaintiff also alleges that defendant Davis authorized and supervised the actions of the
17 officers in this case. (*Id.*)

18 “[A] suit against a state official in his or her official capacity is not a suit against the
19 official but rather is a suit against the official's office. As such, it is no different from a suit
20 against the State itself.” *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) (citation
21 omitted). “[I]f individuals are being sued in their official capacity as municipal officials and the
22 municipal entity itself is also being sued, then the claims against the individuals are duplicative
23 and should be dismissed.” *Vance v. County of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal.
24 1996) (emphasis omitted); *see Johnson v. City of Vallejo*, 99 F.Supp.3d 1212, 1219 (E.D. Cal.
25 2015).

26 Because plaintiff is also suing the City of Elk Grove, plaintiff's claim against defendant
27 Davis in his official capacity is redundant. *See Johnson*, 99 F.Supp.3d at 1219. To the extent
28 plaintiff is attempting to hold defendant Davis liable in his individual capacity for the actions of

1 defendants Durham and Smith this claim also fails. Under 42 U.S.C. § 1983, a supervisor may be
2 held individually liable “only if there exists either (1) his or her personal involvement in the
3 constitutional deprivation, or (2) a sufficient causal connection between the supervisor’s wrongful
4 conduct and the constitutional deprivation.” *Keates v. Koile*, 883 F.3d 1228, 1242-43 (9th Cir.
5 2018) (internal quotations and citation omitted). A supervisor cannot be held liable on a theory of
6 vicarious liability. *Hansen v. Black*, 885 F.2d 642, 645-46 (9th Cir. 1989).

7 Plaintiff has failed to allege enough facts to state a claim against defendant Davis. *Iqbal*,
8 556 U.S. at 678. She has provided no specific facts outlining how defendant Davis was
9 personally involved in the traffic stop. Plaintiff’s claims against defendant Davis should be
10 dismissed without leave to amend.

11 2. Defendant Smith

12 The City defendants argue that plaintiff’s complaint does not put defendant Smith on
13 notice of the allegations against her, and that the only allegations made against defendant Smith
14 are that she was “involved in the stop of Plaintiff.” (ECF No. 8 at 15.)

15 Plaintiff fails to state a claim against defendant Smith on the facts alleged. As the City
16 defendants note, the only time plaintiff mentions defendant Smith is to say that she was “involved
17 in the stop of Plaintiff.” (ECF No. 1 at 6.) But plaintiff does not mention defendant Smith at all
18 when she describes the traffic stop incident. During the December 11, 2024, hearing, plaintiff
19 stated that defendant Smith arrived at the stop later with a canine unit. Plaintiff has not alleged
20 specific facts against defendant Smith to state a claim. Accordingly, plaintiff’s claims against
21 defendant Smith should be dismissed.

22 However, plaintiff may be able to cure the deficiencies in the complaint regarding
23 defendant Smith by alleging additional facts, if any exist, about how defendant Smith was
24 involved in the traffic stop. *See Crane v. City of Dunsmuir*, 2021 WL 431382, at *3 (E.D. Cal.
25 Feb. 8, 2021); *Lopez*, 203 F.3d at 1130. Accordingly, the Court recommends that plaintiff’s
26 claims against defendant Smith be dismissed with leave to amend.

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3. Defendant City of Elk Grove

a. Claims 3 and 4: *Monell* Liability

3 The City defendants move to dismiss plaintiff's claims against the City of Elk Grove
4 because the complaint does not satisfy the *Monell* doctrine. (ECF No. 8 at 17.) While plaintiff
5 does not specifically include the City of Elk Grove in claims 3 and 4, plaintiff makes allegations
6 about the City of Elk Grove's policies and practices. Reading plaintiff's complaint liberally, the
7 Court interprets plaintiff as asserting claims against the City of Elk Grove under *Monell*. Plaintiff
8 alleges that the policy of the Elk Grove Police Department "permits officers to detain a motorist
9 during any traffic stop for the purpose of conducting a search" even though "the officers have no
10 probable cause, or even reasonable suspicion, that the motorists are carrying illegal drugs or
11 engaged in any criminal activity." (ECF No. 1 at 7-8.) Plaintiff further asserts that "all
12 Defendants and [Elk Grove Police Department] supervisors have been aware [Elk Grove Police
13 Department] officers are engaging in racial profiling, yet have failed and refused to stop it,
14 thereby showing deliberate indifference to the rights of African-American motorists." (*Id.* at 8.)
15 Plaintiff also alleges that defendant Davis in his official capacity failed to train officers and
16 "promulgate appropriate policies to prevent race-based vehicular stops." (ECF No. 1 at 5.)

17 Here, plaintiff has not alleged facts sufficient to show that the City of Elk Grove engaged
18 in a practice, pattern, or custom that resulted in the violation of plaintiff's constitutional rights.
19 *Hill v. City of Sacramento*, 2022 WL 17821715, at *5 (E.D. Cal. Dec. 20, 2022). Plaintiff's
20 allegations are conclusory; she does not allege any formally adopted written policies or describe
21 specific customs or practices. *See Smith v. City of Marina*, 709 F. Supp. 3d 926, 936 (N.D. Cal.
22 2024). The Court notes that in plaintiff's second request for judicial notice, plaintiff says that
23 "[s]hort of providing exhibits, admissions, statistics, and witness statements, all of the things
24 discovery might uncover, the Plaintiff is unsure of what defendants expect sufficient allegations
25 to be" regarding her allegations about the Elk Grove Police Department's policies of racial
26 profiling. (ECF No. 39 at 5.) Plaintiff needs to allege more than general statements that the City
27 engaged in race-based stops and detentions and provide examples of specific policies or practices
28 the City followed. Accordingly, plaintiff's complaint fails to state a claim. *See AE v. County of*

1 *Tulare*, 666 F.3d 631, 637 (9th Cir. 2012) (after *Iqbal*, *Monell* claim must provide facts
 2 demonstrating existence of policy or custom, not merely assert elements of municipal liability).

3 Plaintiff has also not alleged facts sufficient to show that there was any failure to train
 4 officers. Section 1983 does not provide for respondeat superior liability. *Monell*, 436 U.S. at
 5 691. However, a municipality can be found liable for the actions of its agents where there is a
 6 failure to train. *Doe v. City of San Diego*, 198 F. Supp. 3d 1153, 1167 (S.D. Cal. 2016). “[T]he
 7 inadequacy of police training may serve as the basis for § 1983 liability only where the failure to
 8 train amounts to deliberate indifference to the rights of persons with whom the police come into
 9 contact.” *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). To state a claim for failure to train,
 10 a plaintiff must allege at the pleading stage “that (1) [s]he was deprived of a constitutional right,
 11 (2) the City had a training policy that amounts to deliberate indifference to the [constitutional]
 12 rights of the persons with whom [its police officers] are likely to come into contact and (3) [her]
 13 constitutional injury would have been avoided had the City properly trained those officers.” *Doe*,
 14 198 F. Supp. 3d at 1167 (quoting *Blankenhorn v. City of Orange*, 485 F.3d 463, 484 (9th Cir.
 15 2007)). In the context of a failure to train claim, the Supreme Court has found that to show
 16 deliberate indifference the municipal actor must disregard a known or obvious consequence of his
 17 action, which ordinarily requires that there be a pattern of similar constitutional violations by
 18 untrained employees. *Connick v. Thompson*, 563 U.S. 51, 61-62 (2011). However, “in a narrow
 19 range of circumstances, a pattern of similar violations might not be necessary to show deliberate
 20 indifference.” *Connick*, 563 U.S. at 63 (citation and quotation marks omitted).

21 Here, while plaintiff has alleged that her constitutional right was violated, there is no
 22 evidence presented that defendant Davis ignored a known consequence of his actions or that there
 23 is a pattern of untrained officers. *Connick*, 563 U.S. at 61-62. Plaintiff describes one traffic
 24 incident where she was pulled over for a violation. Even if her Fourth Amendment survives the
 25 motion to dismiss, she has only alleged one incident. *Hyde v. City of Willcox*, 23 F.4th 863, 875
 26 (9th Cir. 2022) (“an inadequate training policy . . . cannot be inferred from a single incident”).

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1 Plaintiff's *Monell* claims against the City of Elk Grove should be dismissed, but with
 2 leave to amend if she can provide further factual allegations. *County of Tulare*, 666 F.3d at 636-
 3 38.

4 **b. Claims 1, 2, 6: Title VI of the Civil Rights Act of 1964**

5 Plaintiff brings three claims under Title VI of the Civil Rights Act of 1964, 42 U.S.C.
 6 § 2000d. In Claim 1, plaintiff alleges "race discrimination in federally funded programs" against
 7 the Elk Grove Police Department. (ECF No. 1 at 11-12.) Claim 2 alleges "intentional race
 8 discrimination" against the Elk Grove Police Department. (*Id.* at 13.) No defendant is named in
 9 Claim 6.⁵ (*Id.* at 16.) Plaintiff alleges that "methods employed by the [Elk Grove Police
 10 Department] have a discriminatory impact on motorists of color traveling through California,
 11 including plaintiff[]." (*Id.* at 12.) Plaintiff also alleges that the Elk Grove Police Department
 12 engaged in intentional discrimination. The City defendants argue that plaintiff has not alleged
 13 that they denied her participation in any program or activity receiving federal financial assistance,
 14 and that her first and second causes of action are conclusory and devoid of factual allegations.
 15 (ECF No. 8 at 20.)

16 42 U.S.C. § 2000d provides: "No person in the United States shall, on the ground of race,
 17 color, or national origin, be excluded from participation in, be denied the benefits of, or be
 18 subjected to discrimination under any program or activity receiving Federal financial assistance."
 19 42 U.S.C. § 2000d. "[P]rivate individuals may sue to enforce § 601 of Title VI and obtain both
 20 injunctive relief and damages." *Alexander v. Sandoval*, 532 U.S. 275, 279 (2001). "To state a
 21 claim for damages under 42 U.S.C. § 2000d, *et seq.*, a plaintiff must allege that (1) the entity

22

23 ⁵ Plaintiff's sixth claim also alleges a violation of the "nondiscrimination section of the Omnibus
 24 Crime Control and Safe Street Acts of 1968, 28 U.S.C. § 3789d(c)." (ECF No. 1 at 16.) Title 34
 25 of United States Code, Section 10228 (formerly 42 U.S.C. § 3789d) prohibits discrimination in
 26 any program or activity funded by the Act based on "race, color, religion, national origin, or sex." 34 U.S.C. § 10228(c)). To exhaust administrative remedies under 34 U.S.C. § 10228, an
 27 "administrative complaint [must be] filed with the Office of Justice Programs or any other
 28 administrative enforcement agency." 34 U.S.C. § 10228(c)(4)(A); *O.L. v. City of El Monte*, 2020
 WL 4434949, at *16 (C.D. Cal. June 26, 2020). Plaintiff has not made any argument related to
 this claim and has not offered evidence about whether she exhausted her administrative remedies.
 To the extent plaintiff attempts to bring a claim under this statute, it should be dismissed.

1 involved is engaging in racial discrimination; and (2) the entity involved is receiving federal
2 financial assistance.” *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir.
3 1994), *overruled on another ground by Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d
4 1131, 1133 (9th Cir. 2001). “Title VI itself directly reach[es] only instances of intentional
5 discrimination.” *Alexander*, 532 U.S. at 281 (alteration in original) (citation omitted).

6 Here, plaintiff fails to state a claim against the City of Elk Grove under Title VI. Plaintiff
7 alleges that the Elk Grove Police Department receives federal funds. (ECF No. 1 at 12.)
8 However, she only makes general allegations that the “methods employed” by the Elk Grove
9 Police Department have a discriminatory impact on motorists of color. (*Id.*) She states that the
10 Elk Grove Police Department has “relied upon race and ethnicity in conducting stops, detentions,
11 interrogations and searches of motorists” and that they have engaged in an “unabated, continuing
12 pattern and practice of discrimination.” (*Id.* at 7.) She also alleges that “motorists of color,
13 particularly African-American motorists, are targeted and subjected to these practices at grossly
14 disproportionate rates.” However, plaintiff does not provide any facts supporting her general
15 allegations or show how defendant Elk Grove Police Department *intentionally* discriminated
16 against plaintiff based on her “race, color, or national origin.” Plaintiff’s allegations involve a
17 traffic stop where she was pulled over for reckless driving and a red light violation. Plaintiff has
18 not pled facts that support a claim that the Elk Grove Police Department intentionally
19 discriminated against her based on this traffic stop. *See Iqbal*, 556 U.S. at 678. Plaintiff’s claims
20 relating to Title VI should therefore be dismissed with leave to amend should she be able to
21 provide additional factual allegations. *See Lopez*, 203 F.3d at 1130-31.

22 **4. Defendant Durham**

23 The only facts alleged in plaintiff’s complaint relate to the traffic stop on July 17, 2023,
24 involving Defendant Durham. In the description of the incident, plaintiff alleges that she was
25 subjected to an unreasonable search and seizure and racial profiling by Defendant Durham. (ECF
26 No. 1 at 9.) Accordingly, the Court will analyze plaintiff’s third, fourth, tenth, and eleventh
27 claims with respect to defendant Durham.

28 ////

a. Claims 3 and 4: 42 U.S.C. §1983 Claims

2 Plaintiff's claims alleging violations of her constitutional rights arise under 42 U.S.C.
3 § 1983. Section 1983 provides a cause of action for the violation of a plaintiff's constitutional
4 rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d 1087, 1092 (9th
5 Cir. 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). To state a claim
6 under § 1983, plaintiff is required to show that (1) each defendant acted under color of state law
7 and (2) each defendant deprived her of rights secured by the Constitution or laws of the United
8 States. *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997). There is no respondeat
9 superior liability under § 1983, and therefore, each defendant is only liable for his or her own
10 misconduct. *Iqbal*, 556 U.S. at 677.

11 To bring a claim under § 1983, plaintiff must demonstrate that each defendant personally
12 participated in the deprivation of her rights. *Id.*; *Ewing v. City of Stockton*, 588 F.3d 1218, 1235
13 (9th Cir. 2009). Further, the complaint must allege that every defendant acted with the requisite
14 state of mind to violate the underlying constitutional provision. *OSU Student Alliance v. Ray*, 699
15 F.3d 1053, 1070 (9th Cir. 2012).

i. **Claims 4 and 11: Fourth Amendment**

17 Plaintiff's fourth and eleventh claims allege violations of her federal and California
18 Constitutional rights to be free from unreasonable searches and seizures. (ECF No. 1 at 14, 19.)
19 Both the Fourth Amendment and Article I of the California Constitution prohibit unreasonable
20 searches and seizures. *See* U.S. Const. amend. IV; Cal. Const. art. I, § 13. "California has
21 'ordinarily resolved questions about the legality of searches and seizures by construing the Fourth
22 Amendment and Article I, Section 13 in tandem.'"⁶ *Maric v. Alvarado*, 748 F. App'x 747, 749-
23 50 (9th Cir. 2018) (unpublished) (quoting *People v. Buza*, 4 Cal.5th 658, 686 (2018)); *see Chang*
24 *v. County of Siskiyou*, 2024 WL 3890000, at *12 (E.D. Cal. Aug. 21, 2024). "[T]he right to be

26 ⁶ The City defendants argue plaintiff's claims under the California Constitution, Article I,
27 Sections 7(a) and 13 should be dismissed because they do not provide a right for damages. (ECF
28 No. 8 at 29-30.) However, plaintiff's complaint broadly requests damages, injunctive relief, and
 declaratory relief. Accordingly, the Court need not address whether the California Constitution
 confers a private right for damages.

1 free from unreasonable searches under Art. I § 13 of the California Constitution parallels the
 2 Fourth Amendment inquiry” *Sanchez v. Los Angeles Dep’t of Transportation*, 39 F.4th 548,
 3 553 (9th Cir. 2022) (quoting *Sanchez v. County of San Diego*, 464 F.3d 916, 928–29 (9th Cir.
 4 2006)). Plaintiff claims that “defendants” subjected her to a “lengthy detention, interrogation and
 5 search.” (*Id.*) Most of the specific facts alleged in plaintiff’s complaint relate to the traffic stop
 6 by defendant Durham on July 17, 2023. The City defendants argue that this claim against
 7 defendant City of Elk Grove should be dismissed under the *Monell* doctrine because plaintiff only
 8 pleads conclusory allegations and that the Fourth Amendment claim should be dismissed because
 9 there was probable cause to stop and detain plaintiff. (ECF No. 8 at 17, 22.)

10 The Fourth Amendment provides that “[t]he right of the people to be secure in their
 11 persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be
 12 violated.” U.S. Const. amend. IV. “[T]he Fourth Amendment is enforceable against the States
 13 through the Fourteenth Amendment.” *Camara v. Mun. Court of City & Cty. of San Francisco*,
 14 387 U.S. 523, 528 (1967).

15 1. Traffic Stop By Defendant Durham

16 Here, plaintiff alleges that defendant Durham pulled her and her sister over in an
 17 “unmarked civilian vehicle” after defendant Durham was “harassing and tailgating [the] vehicle
 18 driven by Plaintiff.” (ECF No. 1 at 9.)

19 “An investigatory stop (temporary detention) may be conducted without violating the
 20 Fourth Amendment’s ban on unreasonable searches and seizures if the investigatory stop is
 21 otherwise lawful.” *San Joaquin Deputy Sheriffs’ Ass’n v. County of San Joaquin*, 898 F. Supp.
 22 2d 1177, 1185 (E.D. Cal. 2012) (citing *Arizona v. Johnson*, 555 U.S. 323, 326 (2009)). During a
 23 traffic stop, an investigatory stop is lawful “whenever it is lawful for police to detain an
 24 automobile and its occupants pending inquiry into a vehicular violation.” *Id.* at 327. To initiate
 25 an investigatory stop of a motorist, there must “at least exist reasonable suspicion that the
 26 motorist is engaging in illegal activity.” *Liberal v. Estrada*, 632 F.3d 1064, 1077 (9th Cir. 2011)
 27 (citation omitted), abrogated on other grounds by *Hampton v. California*, 83 F.4th 754, 772 (9th
 28 Cir. 2023). To form a reasonable suspicion, an officer must have “specific, articulable facts

which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained engaged in criminal activity.” *Id.* (citing *United States v. Lopez-Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000)). “As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Whren v. United States*, 517 U.S. 806, 810 (1996).

6 Plaintiff admits that she was stopped because of suspicion of reckless driving and a red
7 light violation. (ECF No. 1 at 9.) Reckless driving and running a red light are traffic violations
8 that would give defendant Durham probable cause to stop plaintiff. *See San Joaquin Deputy*
9 *Sheriffs' Ass'n v. County of San Joaquin*, 898 F. Supp. 2d 1177, 1185-86 (E.D. Cal. 2012). In her
10 complaint, plaintiff does not allege that she did not actually run the red light or that she was not
11 driving recklessly. Further, at the hearing on December 11, 2024, the parties informed the court
12 that plaintiff was cited for reckless driving and has a pending criminal trial in California state
13 court regarding the reckless driving citation. Plaintiff's complaint also does not address whether
14 defendant had probable cause to stop plaintiff, nor does it allege facts showing defendant lacked
15 probable cause. The Court therefore finds that plaintiff's complaint lacks sufficient facts to make
16 out a claim under the Fourth Amendment against defendant Durham based on the traffic stop.
17 Therefore, the City defendants' motion to dismiss should be granted as to defendant Durham's
18 stop of plaintiff, without leave to amend. *See Franciscan Ceramics, Inc.*, 818 F.2d at 1472.

2. Search of Vehicle by Defendant Durham

20 Plaintiff also alleges that during the traffic stop, defendant Durham searched plaintiff's
21 "car/trunk and [plaintiff's sister's] purse thoroughly." (ECF No. 1 at 9.) Warrantless searches by
22 law enforcement officers "are per se unreasonable under the Fourth Amendment—subject only to
23 a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S.
24 347, 357 (1967) (footnote omitted). Because of this, the government bears the burden of
25 demonstrating that a warrantless search or seizure falls within an exception to the warrant
26 requirement. *United States v. Crevantes*, 703 F.3d 1135, 1141 (9th Cir. 2012). One exception to
27 the warrant requirement is the automobile exception, which allows officers to search a vehicle if
28 the officers have "probable cause to believe a vehicle contains contraband" or evidence of

1 criminal activity. *United States v. Phillips*, 9 F. Supp. 3d 1130, 1135, 1137 (E.D. Cal. 2014)
2 (citation omitted); *see United States v. Ross*, 456 U.S. 798, 825 (1982).

3 Here, plaintiff has not alleged that defendants lacked probable cause to search her vehicle.
4 However, neither have the City defendants demonstrated that they had probable cause to believe
5 plaintiff's vehicle contained contraband. The City defendants argue that the search was proper
6 under the inventory search exception, which allows the search of a lawfully impounded vehicle.
7 (ECF No. 8 at 22.) Taking the allegations in plaintiff's complaint as true, plaintiff's vehicle was
8 searched before it was impounded. (ECF No. 1 at 9.) During the December 11, 2024, hearing,
9 plaintiff also stated that her vehicle was searched before the tow truck was called to remove her
10 vehicle. Additionally, as discussed below, it is unclear whether plaintiff's vehicle was lawfully
11 impounded. Plaintiff has sufficiently pled an unreasonable search under the Fourth Amendment,
12 and the City defendants' motion to dismiss on this ground should be denied.

13 3. Seizure of Vehicle by Defendant Durham

14 Plaintiff further alleges that defendant Durham impounded plaintiff's car. (ECF No. 1 at
15 9.) While plaintiff does not specifically allege that impounding her vehicle violated her Fourth
16 Amendment rights, plaintiff states that her vehicle was impounded and the "Elk Grove police
17 department refused to permit [plaintiff's sister] to gain lawful possession of the vehicle in the
18 name of [plaintiff]." (*Id.*) Construing plaintiff's complaint liberally, the court reads plaintiff's
19 complaint as contesting the impoundment of her vehicle. The City defendants argue that under
20 California law, an officer may impound a vehicle when a driver is engaged in reckless driving,
21 and that a vehicle that is going to be lawfully impounded may be searched under the inventory
22 search exception. (ECF No. 8 at 22.)

23 Another exception to the warrant requirement is the community caretaking exception,
24 which authorizes a police officer to "impound vehicles that jeopardize public safety and efficient
25 movement of vehicular traffic." *Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005)
26 (citation omitted). "The reasonableness of an impoundment under the community caretaking
27 function does not depend on whether the officer had probable cause to believe that there was a
28 traffic violation, but on whether the impoundment fits within the 'authority of police to seize and

1 remove from the streets vehicles impeding traffic or threatening public safety and convenience.””
2 *Id.* (citing *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976)). The government may not
3 impound a vehicle by only citing to the California Vehicle Code or police policy on
4 impoundments. *Crevantes*, 703 F.3d at 1142. The officer must consider the location of the
5 vehicle and whether it is actually impeding traffic or threatening public safety. *Id.*

6 Here, it is the City defendants’ burden to show that impounding plaintiff’s vehicle falls
7 within the community caretaking exception to the Fourth Amendment’s warrant requirement. *See*
8 *Crevantes*, 703 F.3d at 1141. Based on the facts alleged in plaintiff’s complaint, it appears that
9 defendant Durham lawfully stopped plaintiff, but probable cause to believe there was a traffic
10 violation is not enough on its own to show that defendant Durham lawfully impounded plaintiff’s
11 vehicle. *Miranda*, 429 F.3d at 864. Further, a California statue on its own is also not enough of a
12 basis to lawfully impound a vehicle under the community caretaking exception. *Crevantes*, 703
13 F.3d at 1142. Taking the allegations in plaintiff’s complaint as true, plaintiff has alleged that she
14 was pulled over for a traffic violation, her vehicle was searched, and then her vehicle was
15 impounded. The City defendants have not alleged facts in their opposition showing that
16 plaintiff’s vehicle was impounded for a public safety purpose or convenience. The City
17 defendants’ contention that plaintiff being pulled over for reckless driving gave defendant
18 Durham authority to impound the vehicle under California Vehicle Code section 23109.2, without
19 more, is not enough to support dismissal. Accordingly, the City defendants’ motion to dismiss
20 plaintiff’s Fourth Amendment claim related to defendant Durham should be denied with respect
21 to the impoundment of plaintiff’s vehicle.

22 4. Qualified Immunity

23 The City defendants argue that defendant Durham is entitled to qualified immunity. (ECF
24 No. 8 at 18-19.) “Qualified immunity is an affirmative defense that must be raised by a
25 defendant.” *Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001); *see Harlow v. Fitzgerald*,
26 457 U.S. 800, 815 (1982). When a defendant asserts qualified immunity in a motion to dismiss
27 under Rule 12(b)(6), “dismissal is not appropriate unless [the court] can determine, based on the
28 complaint itself, that qualified immunity applies.” *Id.* “Determining whether officials are owed

1 qualified immunity involves two inquiries: (1) whether, taken in the light most favorable to the
2 party asserting the injury, the facts alleged show the officer's conduct violated a constitutional
3 right; and (2) if so, whether the right was clearly established in light of the specific context of the
4 case.” *O'Brien v. Welty*, 818 F.3d 920, 936 (9th Cir. 2016) (quoting *Krainski v. Nevada ex rel.*
5 *Bd. of Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 970 (9th Cir. 2010)).

6 Here, taking plaintiff's allegations as true, she has stated a claim for the violation of a
7 constitutional right. Additionally, the right to be free from unreasonable interferences in property
8 is a longstanding and clearly established right. *See San Joaquin Deputy Sheriffs' Ass'n*, 898 F.
9 Supp. 2d at 1187. Therefore, defendant Durham is not entitled to qualified immunity for this
10 aspect of plaintiff's Fourth Amendment claim at this stage of the case.

ii. Plaintiff's Equal Protection Claims

12 Plaintiff's third and tenth claims are Equal Protection claims under the federal and
13 California constitutions. The Court will address these claims together because “[t]he equal
14 protection analysis under the California Constitution is ‘substantially similar’ to analysis under
15 the federal Equal Protection Clause.” *Olson v. California*, 104 F.4th 66, 76 (9th Cir. 2024)
16 (quoting *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th Cir. 2004)) (addressing
17 claims for Equal Protection under the federal and California constitutions together); *see also*
18 *Chang v. County of Siskiyou*, 2024 WL 3890000, at *12 (E.D. Cal. Aug. 21, 2024). Plaintiff
19 alleges that “Defendants” engaged in a “continuing pattern and practice of intentional race
20 discrimination.” (ECF No. 1 at 13.) The law enforcement defendants argue that plaintiff has
21 failed to state a claim because she has not provided facts that support her claim and makes general
22 boilerplate claims. (ECF No. 8 at 21.)

23 The Equal Protection clause requires that persons who are similarly situated be treated
24 alike. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). An equal
25 protection claim may be established by showing that the defendant intentionally discriminated
26 against the plaintiff based on the plaintiff's membership in a protected class, *Serrano v. Francis*,
27 345 F.3d 1071, 1082 (9th Cir. 2003), or that similarly situated individuals were intentionally
28 treated differently without a rational relationship to a legitimate state purpose, *Village of*

1 *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). A plaintiff must allege sufficient facts either
2 showing intentional unlawful discrimination or “that are at least susceptible of an inference of
3 discriminatory intent.” *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1026 (9th Cir.
4 1998).

5 Here, plaintiff fails to sufficiently allege that she was intentionally discriminated against
6 based on her membership in a protected class, or that she was intentionally treated differently
7 than similarly situated individuals without a rational relationship to a legitimate state purpose.
8 *See Iqbal*, 556 U.S. at 678. Plaintiff was allegedly pulled over while driving recklessly and for a
9 red light violation. Plaintiff states generally that “[p]olice officers constantly pull over cars
10 driven by African-Americans, for certain traffic violations, but rarely pull over white drivers for
11 the same violations.” (ECF No. 1 at 7.) However, plaintiff does not identify any similarly
12 situated individuals or instances where a similarly situated individual was treated differently. *See*
13 *Todd v. Briesenick*, 2013 WL 2151658, at *5 (E.D. Cal. May 16, 2013) (granting motion to
14 dismiss where “plaintiff [did] not provide specific facts, beyond mere speculation, supporting his
15 claims that defendants treated him differently from similarly situated persons”). Because
16 plaintiff’s claim involves one traffic stop, she fails to state an equal protection claim, and the City
17 defendants’ motion to dismiss should be granted regarding this claim without leave to amend.
18 *See Franciscan Ceramics, Inc.*, 818 F.2d at 1472.

b. Claim 5: Commerce Clause

20 Plaintiff's fifth claim is for a violation of the Commerce Clause. (ECF No. 1 at 15.)
21 Plaintiff alleges that defendants "have caused Plaintiff to be penalized and deterred in the exercise
22 of her fundamental right to interstate travel and migration on account of her race and/or ethnicity
23 and/or national origin." (*Id.*) Defendants argue that plaintiff has made no reference to any
24 interstate commerce in her complaint or suggested how a routine traffic stop burdens interstate
25 commerce. (ECF No. 8 at 24.)

26 “The Commerce Clause of the United States Constitution assigns to Congress the
27 authority ‘[t]o regulate Commerce with foreign Nations, and among the several States.’” *Sam*
28 *Francis Foundation v. Christies, Inc.*, 784 F.3d 1320, 1323 (9th Cir. 2015) (quoting U.S. Const.

1 art. I, § 8, cl. 3) (alteration in original). “Generally speaking, the Commerce Clause protects
2 against inconsistent legislation arising from the projection of one state regulatory regime into the
3 jurisdiction of another State.” *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336-37 (1989).
4 “[S]pecifically, the Commerce Clause dictates that no State may force an out-of-state merchant to
5 seek regulatory approval in one State before undertaking a transaction in another.” *Id.* at 337.

6 Here, plaintiff fails to state a claim under the Commerce Clause. She makes no
7 allegations implicating interstate commerce, nor does she explain how a traffic stop affects
8 interstate commerce. Indeed, plaintiff is a California citizen and the traffic stop occurred in
9 California. (ECF No. 1 at 5.) Accordingly, the City defendants’ motion should be granted
10 regarding this claim, and plaintiff’s Commerce Clause claim should be dismissed without leave to
11 amend because amendment would be futile. *See Franciscan Ceramics, Inc.*, 818 F.2d at 1472.

12 **c. Claim 5: Privileges and Immunities Clauses**

13 Plaintiff’s fifth claim is also for violations of the Privileges and Immunities Clauses under
14 Article IV of the United States Constitution and under the Fourteenth Amendment. The City
15 defendants argue that plaintiff has not stated a viable claim under Article IV because her
16 complaint “does not involve any relevant issues to the vitality of the Nation as a single entity.”
17 (ECF No. 8 at 23.)

18 The Privileges and Immunities Clause of Article IV prohibits states from discriminating
19 against out-of-state residents when it comes to certain “fundamental” rights. *McBurney v. Young*,
20 569 U.S. 221, 226 (2013). The clause’s protections do not apply to laws that do not discriminate
21 against non-residents. *See id.* at 227-28.

22 Here, plaintiff’s allegations fail to allege any discrimination against non-California
23 residents. Accordingly, the law enforcement defendant’s motion as to this claim should be
24 granted, and plaintiff’s claim should be dismissed without leave to amend. *See Franciscan*
25 *Ceramics, Inc.*, 818 F.2d at 1472.

26 The City defendants also argue that plaintiff’s claim under the Fourteenth Amendment
27 fails because her complaint does not implicate interstate travel and migration. (ECF No. 8 at 24.)
28 The Supreme Court has applied the Privileges or Immunities Clause of the Fourteenth

1 Amendment narrowly, to “protect[] only those rights ‘which owe their existence to the Federal
2 government, its National character, its Constitution, or its laws.’” *McDonald v. City of Chicago*,
3 *Ill.*, 561 U.S. 742, 754 (2010) (quoting *Slaughter-House Cases*, 16 Wall. 36, 79 (1873)). “The
4 clause protects ‘very few rights,’ namely ‘the right to petition Congress, the right to vote in
5 federal elections, the right to interstate travel or commerce, the right to enter federal lands, or the
6 rights of a citizen while in the custody of federal officers.’” *Peterson v. Farrow*, 2016 WL
7 3477238, at *5 (E.D. Cal. June 27, 2016) (citation omitted).

8 Plaintiff fails to allege any facts in the complaint which demonstrate how a traffic stop
9 impacts her right to interstate travel. Accordingly, plaintiff has failed to allege a plausible claim
10 under the Privileges or Immunities Clause of the Fourteenth Amendment and the City defendants’
11 motion on this claim should be granted. The City defendants’ motion to dismiss should be
12 granted regarding this claim and plaintiff’s claim should be dismissed without leave to amend
13 because amendment would be futile. *See Franciscan Ceramics, Inc.*, 818 F.2d at 1472.

14 **d. Claim 7: 42 U.S.C. § 1981**

15 Plaintiff’s seventh claim is for a violation of 42 U.S.C. § 1981. The City defendants argue
16 that plaintiff has not alleged any contractual relationship between herself or any defendant. (ECF
17 No. 8 at 25.)

18 Section 1981(a) provides:

19 All persons within the jurisdiction of the United States shall have the same right in
20 every State and Territory to make and enforce contracts, to sue, be parties, give
21 evidence, and to the full and equal benefit of all laws and proceedings for the
22 security of persons and property as is enjoyed by white citizens, and shall be
subject to like punishment, pains, penalties, taxes, licenses, and exactions of every
kind, and to no other.

23 Plaintiff’s § 1981 claim fails because “Section 1981 establishes substantive rights that a
24 state actor may violate. It does not itself contain a remedy against a state actor for such
25 violations. A plaintiff seeking to enforce rights secured by § 1981 against a state actor must bring
26 a cause of action under § 1983.” *Yoshikawa v. Seguirant*, 74 F.4th 1042, 1047 (9th Cir. 2023).
27 Nor does the substance of plaintiff’s complaint make out a claim. “To state a claim pursuant to
28

1 section 1981, a plaintiff must allege (1) the plaintiff is a member of a racial minority; (2) an intent
 2 to discriminate on the basis of race by the defendant; and (3) the discrimination concerns one or
 3 more of the activities enumerated in the statute.” *Keum v. Virgin America Inc.*, 781 F.Supp.2d
 4 944, 954 (N.D. Cal. 2011). The complaint fails to state any facts linking defendants’ activity to
 5 an intent to discriminate. Plaintiff has not alleged any facts showing that her race was the reason
 6 she was pulled over. As plaintiff admits, she was pulled over because of reckless driving and a
 7 red light violation. Because plaintiff has not properly brought her claim under § 1983 plaintiff’s
 8 claim should be dismissed with leave to amend.

9 **e. Claim 8: Claim under 42 U.S.C. § 1986**

10 Plaintiff’s eighth claim is for violation of 42 U.S.C. § 1986. Plaintiff argues that
 11 defendants “by way of a conspiracy among them” have caused plaintiff’s civil rights to be
 12 violated. (ECF No. 1 at 17.) The City defendants argue that plaintiff’s claim fails because she
 13 has not first pled a claim under section 1985, and that she has not alleged any agreement or
 14 meeting of the minds of defendants. (ECF No. 8 at 26.)

15 In order to state a claim under section 1986, plaintiff must state a valid claim under
 16 section 1985. *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 626 (9th Cir. 1988.)
 17 Under section 1986, a person is liable if they know of an impending violation of section 1985 but
 18 does not prevent the violation. *Id.* As relevant here, liability exists under section 1985(2), if

19 [T]wo or more persons conspire for the purpose of impeding, hindering,
 20 obstructing, or defeating, in any manner, the due course of justice in any State or
 21 Territory, with intent to deny to any citizen the equal protection of the laws, or to
 22 injure him or his property for lawfully enforcing, or attempting to enforce, the
 23 right of any person, or class of persons, to the equal protection of the laws.

24 42 U.S.C. § 1985(2). A conspiracy claim under § 1985(2) requires a direct or indirect purpose to
 25 deprive any persons of the equal protection of the laws, or the equal privileges or immunities
 26 under the laws, and a class race-based animus. *See Bretz v. Kelman*, 773 F.2d 1026, 1028 (9th
 27 Cir. 1985) (en banc). Under section 1985(3), liability exists

28 If two or more persons in any State or Territory conspire or go in disguise on the
 29 highway or on the premises of another, for the purpose of depriving, either directly
 30 or indirectly, any person or class of persons of the equal protection of the laws, or

1 of equal privileges and immunities under the laws. . . .
 2 42 U.S.C. § 1985(3). A racial, or other class-based, invidiously discriminatory animus is an
 3 indispensable element of the claim. *See Bray v. Alexandria Women's Health Clinic*, 506 U.S.
 4 263, 267-69 (1993).

5 Here, plaintiff's section 1986 claims fails because she has not adequately pled a claim
 6 under section 1985. For this reason, the City defendants' motion to dismiss regarding plaintiff's
 7 section 1986 claim should be granted, but with leave to amend if plaintiff can state a claim under
 8 section 1985.

9 **5. Plaintiff's State Law Claims**

10 The City defendants argue that plaintiff's state law claims for money damages are barred
 11 by the presentation requirements of the California Government Claims Act. (ECF No. 8 at 26-
 12 27.) Under the California Government Claims Act,⁷ set forth in California Government Code
 13 sections 810 *et seq.*, a plaintiff may not bring a suit for monetary damages against a public
 14 employee or entity unless the plaintiff first presented the claim to the California Victim
 15 Compensation and Government Claims Board ("Board"), and the Board acted on the claim, or the
 16 time for doing so expired. Compliance with this "claim presentation requirement" constitutes an
 17 element of a cause of action for damages against a public entity or official. *State v. Superior*
 18 *Court (Bodde)*, 32 Cal.4th 1234, 1244 (2004). Thus, timely presentation of a claim under the
 19 Government Claims Act is an element of the cause of action and must be pled in the complaint.
 20 *Id.* at 1237, 1240; *see also Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d. 1470, 1477 (9th Cir.
 21 1995). The plaintiff must present facts demonstrating compliance, rather than simply conclusions
 22 suggesting as much. *Shirk v. Vista Unified School Dist.*, 42 Cal.4th 201, 209 (2007). Such
 23 requirements also apply to state law claims included in a federal action. *See Volis v. Housing*
 24 *Auth. of the City of L.A. Emps.*, 670 F. App'x 543, 544 (9th Cir. 2016) (unpublished).

25
 26 ⁷ *See Nuveen Mun. High Income Opportunity Fund v. City of Alameda, Cal.*, 730 F.3d 1111,
 27 1124 (9th Cir. 2013) ("Consistent with the California Supreme Court, we 'adopt the practice of
 28 referring to the claims statutes as the Government Claims Act, to avoid the confusion engendered
 by the informal short title Tort Claims Act.'" (quoting *City of Stockton v. Superior Court*, 42 Cal.
 4th 73 (2007)).)

1 To be timely, a claim must be presented to the Board “not later than six months after the
2 accrual of the cause of action.” Cal. Govt. Code § 911.2. Thereafter, “any suit brought against a
3 public entity” must be commenced no more than six months after the public entity rejects the
4 claim. Cal. Gov. Code, § 945.6, subd. (a)(1). Federal courts must require compliance with the
5 California Government Claims Act for pendant state law claims that seek damages against state
6 employees or entities. *Willis v. Reddin*, 418 F.2d 702, 704-05 (9th Cir. 1969); *Mangold*, 67 F.3d
7 at 1477. State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983, may
8 proceed only if the claims were presented in compliance with the applicable exhaustion
9 requirements. *Karim-Panahi*, 839 F.2d at 627; *Butler v. Los Angeles County*, 617 F. Supp. 2d
10 994, 1001 (C.D. Cal. 2008).

11 Here, plaintiff alleges that she filed an administrative complaint with the Elk Grove Police
12 Department and that she included this with her complaint. (ECF No. 1 at 9.) Plaintiff actually
13 only included the responses she received from this administrative complaint. (*Id.* at 24-26.)
14 Additionally, plaintiff has provided no evidence that she complied with the California
15 Government Claims Act by presenting her claim to the California Victim Compensation and
16 Government Claims Board. Accordingly, plaintiff has not properly complied with the
17 presentation requirements, and the City defendants' motion to dismiss should be granted as to
18 plaintiff's state law claims with leave to amend if plaintiff can show she complied with the
19 presentation requirement.

a. Claims 13 and 14: Tort Causes of Action

21 Plaintiff's thirteenth and fourteenth claims for intentional infliction of emotional distress
22 and negligent infliction of emotional distress also fail because plaintiff has not sufficiently plead
23 the elements of these claims. Plaintiff alleges in various places in her complaint that defendants'
24 actions caused her "humiliation, mental pain and suffering." (See, e.g., ECF No. 1 at 14.) The
25 City defendants argue that plaintiff's claims are barred by the California Government Claims Act.
26 (ECF No. 8 at 26-28.)

27 As an initial matter, the City defendants argue that plaintiff's claims are barred by
28 statutory immunities in the Government Claims Act sections 815 and 820.2. (ECF No. 8 at 27-.

1 28.) The City defendants argue that there is no statutory basis for the intentional or negligent
2 infliction of emotional distress claims against the City defendants pursuant to California
3 Government Code section 815; thus the claims against the City must fail. However, section 815.2
4 explicitly provides for vicarious liability and states that “[a] public entity is liable for injury
5 proximately caused by an act or omission of an employee of the public entity within the scope of
6 his employment.” *Id.*; *see Luttrell v. Hart*, 2020 WL 5642613, at *6 (N.D. Cal. Sept. 22, 2020).
7 “[U]nder California law municipalities enjoy no special immunity for negligence actions [and that
8 a municipality] is liable for the negligence of [its employees] to the same extent that [the
9 employees] would be liable individually.” *Luttrell*, 2020 WL 5642613, at *6 (quoting *Hernandez*
10 *v. City of San Jose*, 2016 WL 5944095, at *45-46 (N.D. Cal. Oct. 13, 2016)). Therefore, the City
11 of Elk Grove may be held liable for causes of action pursued under the doctrine of vicarious
12 liability whenever a claim survives against a defendant officer. Accordingly, the motion to
13 dismiss should be denied on this ground.

14 The City defendants also argue statutory immunity under section 820.2. (ECF No. 8 at
15 28.) Section 820.2 states that “[e]xcept as otherwise provided by statute, a public employee is not
16 liable for an injury resulting from his act or omission where the act or omission was the result of
17 the exercise of the discretion vested in him, whether or not such discretion be abused.” However,
18 this section “only applies to policy decisions that involve ‘deliberate and considered policy
19 decisions,’ not to operational decisions made by the police purporting to enforce the law.”
20 *Lennox v. City of Sacramento*, 2024 WL 3845378, at *29 (E.D. Cal. Aug. 16, 2024) (quoting
21 *Caldwell v. Montoya*, 10 Cal. 4th 972, 981-82 (1995); *see also Sharp v. County of Orange*, 871
22 F.3d 901, 920 (9th Cir. 2017) (“As a matter of law, section 820.2 [‘discretionary’] immunity does
23 not apply to an officer’s decision to detain or arrest a suspect” and “covers only ‘policy’ decisions
24 made by a ‘coordinate branch[] of government,’ not ‘operational decision[s] by the police
25 purporting to apply the law.’” (alterations in original)). At this stage in the case, plaintiff has not
26 sufficiently alleged that her emotional distress “arose from the actions within the individual
27 defendants’ discretion.” *Bailey v. Shasta Union High School District*, 2024 WL 4826447, at *4
28 (E.D. Cal. Nov. 19, 2024). Plaintiff states that she “has been very upset since her unjustified

1 stop" and that it is "difficult for her to accept that she was stopped, subjected to unwarranted
2 search and examination." (ECF NO. 1 at 9.) However, she has not alleged sufficient details
3 about the cause of her alleged emotional distress. Neither have defendants demonstrated that the
4 way an officer conducts a search and seizure is discretionary so as to provide immunity.
5 Accordingly, the City defendants' motion to dismiss on statutory immunity grounds should be
6 denied.

7 Regardless, plaintiff has not sufficiently plead the elements of these claims because the
8 claims do not specify the specific individuals who committed the torts or what specific duties are
9 owed to the plaintiff. *See J.C. v. City of Vallejo*, 2024 WL 5146021, at *6 (E.D. Cal. Dec. 17,
10 2024). "Negligent infliction of emotional distress is a form of the tort of negligence; plaintiff
11 must demonstrate facts satisfying the elements of duty, breach of duty, causation, and damages."
12 *Hill*, 2022 WL 17821715, at *7; (citing *Huggins v. Longs Drug Stores California, Inc.*, 6 Cal.4th
13 124, 129 (1993)). In California "there is no independent tort of negligent infliction of emotional
14 distress;" rather, "[t]he tort is negligence, a cause of action in which a duty to the plaintiff is an
15 essential element." *Potter v. Firestone Tire & Rubber Co.*, 6 Cal.4th 965, 984 (1993). The
16 existence of a duty is a question of law. *Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.*,
17 48 Cal.3d 583, 588 (1989). The elements of a cause of action for negligent infliction of
18 emotional distress are: (1) the "defendant engaged in negligent conduct"; (2) the "plaintiff
19 suffered serious emotional distress"; and (3) the "defendants' negligent conduct was a cause of
20 the serious emotional distress." *Butler-Rupp v. Lourdeaux*, 134 Cal.App.4th 1220, 1226 n.1
21 (2005).

22 Plaintiff has offered no facts supporting any of the elements or described how she suffered
23 serious emotional distress.

24 A claim for intentional infliction of emotional distress requires "(1) extreme and
25 outrageous conduct by the defendant with the intention of causing, or reckless disregard of the
26 probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme
27 emotional distress; and (3) actual and proximate causation of the emotional distress by the
28 defendant's outrageous conduct." *Hughes v. Pair*, 46 Cal. 4th 1035, 1050 (2009) (citation and

1 internal quotation marks omitted). A defendant's conduct is "outrageous" when it is so "extreme
2 as to exceed all bounds of that usually tolerated in a civilized community." *Id.*

3 Here plaintiff also has not offered any facts showing that any defendants' conduct was so
4 extreme that it exceeded all bound of what is usually tolerated. She also has not demonstrated
5 that defendants acted in any way that would cause her emotional distress.

6 For these reasons, plaintiff's emotional distress claims should be dismissed with leave to
7 amend.

8 **b. Claim 9: California Government Code §§ 11135 and 11139**

9 Plaintiff's ninth claim asserts that the Elk Grove Police Department violated the California
10 Government Code sections 11135 and 11139, alleging that the "methods employed by the [Elk
11 Grove Police Department] discriminate against African-American motorists traveling through Elk
12 Grove." (ECF No. 1 at 17-18.) The City defendants argue that plaintiff has not alleged that they
13 denied her participation in any program or activity receiving state financial assistance. (ECF No.
14 8 at 29.)

15 Under California Government Code section 11135, state agencies and state-funded
16 programs cannot subject anyone to discrimination on the basis of, among other things, race.
17 Section 11139 sets out the remedy for any violations of section 11135. For the same reasons that
18 the Court concludes Plaintiff has not stated a claim for intentional discrimination on the basis of
19 race under Title VI or for violation for the equal protection clause, the Court also concludes that
20 Plaintiff has not adequately alleged that she was discriminated against because of her race.
21 Plaintiff fails to state a claim for violation of California Government Code sections 11135 and
22 11139 and the law enforcement defendant's motion to dismiss regarding claim nine should be
23 granted and plaintiff's claim should be dismissed with leave to amend.

24 **c. Claim 12: California Civil Code § 52.1(b)**

25 The Tom Bane Civil Rights Act, California Civil Code § 52.1, "protects individuals from
26 conduct aimed at interfering with rights that are secured by federal or state law, where the
27 interference is carried out 'by threats, intimidation or coercion.'" *Reese v. County of Sacramento*,
28 888 F.3d 1030, 1040–41 (9th Cir. 2018). When a Bane Act claim is based on an alleged federal

1 constitutional violation, a plaintiff may rely on the same allegations to prove that the defendant
2 deprived them of a constitutional right and threatened, intimidated or coerced them. *See id.* at
3 1043 (“[T]he Bane Act does not require the ‘threat, intimidation or coercion’ element of the claim
4 to be transactionally independent from the constitutional violation alleged.”). The Bane Act
5 requires “a specific intent to violate the [plaintiff’s] right to be free from unreasonable seizure.”
6 *Id.* (quoting *Cornell v. City & County of San Francisco*, 17 Cal.App.5th 766, 801 (2017)).

7 Here, plaintiff has stated a claim based on her federal constitutional rights, however, she
8 has not alleged any facts that show any defendant threatened, intimidated or coerced her during
9 the traffic stop on July 17, 2023. There are also no facts presented that defendant Durham has a
10 “specific intent” to violate plaintiff’s rights. Therefore, the City defendants’ motion as to
11 plaintiff’s twelfth claim should be granted and plaintiff’s claim should be dismissed with leave to
12 amend.

13 **V. Plaintiff’s Motions for Judgment on the Pleadings**

14 On September 23, 2024, plaintiff filed a motion for judgment on the pleadings. (ECF No.
15 23.) After improperly noticing this motion before Chief Judge Nunley, plaintiff filed another
16 motion on October 8, 2024.⁸ (ECF Nos. 30, 31.) In her motions, plaintiff alleges that “judgment
17 on the pleadings is appropriate for the Equal Protection Clause to the Fourteenth Amendment
18 cause of action and the Title 42 U.S.C. 1983, 2000d causes of action.” (ECF No. 23-1 at 4.) She
19 also alleges that the “City of Elk Grove Police Department, controlled by Defendant(s) County of
20 Sacramento, has a pattern of failing to discipline officers for using racial profiling, amounting to a
21 de facto custom.” (*Id.* at 6.) Plaintiff states that she is attempting “to show a civil conspiracy by
22 the Defendant(s) based on her race and ethnic origin” to deprive her of the right to travel. (ECF
23 No. 31 at 7.)

24 ////

25

⁸ The Court notes that under Local Rule 230(b), “Motions defectively noticed shall be filed, but
26 not set for hearing; the Clerk shall immediately notify the moving party of the defective notice
27 and of the next available dates and times for proper notice, and the moving party shall file and
28 serve a new notice of motion setting forth a proper time and date.” Under this rule, plaintiff
should not have filed a second motion for judgment on the pleadings. However, the Court has
reviewed and will consider both motions.

1 Defendants each opposed the motion. Both defendants argued that plaintiff's motion is
2 untimely because the pleadings are not closed as an answer has not been filed. (ECF Nos. 28 at
3 2-3, 41 at 2.) The City defendants also argued that plaintiff has failed to show that she is entitled
4 to judgment as a matter of law. (ECF No. 28 at 4.)

5 Because plaintiff's motion is untimely, the motions for judgment on the pleadings should
6 be denied.

7 **VI. Conclusion**

8 For the reasons set forth above, IT IS HEREBY ORDERED that Plaintiff's requests for
9 judicial notice (ECF Nos. 32, 39, 42) are DENIED.

10 In addition, IT IS HEREBY RECOMMENDED as follows:

- 11 1. The County of Sacramento's motion to dismiss (ECF No. 10) be granted
12 without leave to amend;
- 13 2. Defendants City of Elk Grove, Davis, Durham, and Smith's ("City
14 defendants") motion to dismiss (ECF No. 8) be granted in part and denied in
15 part as follows:
 - 16 a. City defendants' motion be denied as to plaintiff's Fourth Amendment
17 claim for an unreasonable search and seizure of her vehicle;
 - 18 b. City defendants' motion be granted without leave to amend as to
19 defendant Davis;
 - 20 c. City defendants' motion be granted with leave to amend as to defendant
21 Smith;
 - 22 d. City defendants' motion be granted with leave to amend as to the City
23 of Elk Grove;
 - 24 e. City defendants' motion be granted with leave to amend as to the
25 following claims:
 - 26 i. The Title VI claim;
 - 27 ii. The 42 U.S.C. §1986 claim;
 - 28 iii. The 42 U.S.C. § 1981 claim;

- iv. The state law claims; and
- f. City defendants' motion be granted without leave to amend as to the following claims:
 - i. The initial traffic stop component of plaintiff's Fourth Amendment claim;
 - ii. The Commerce Clause claim;
 - iii. The Privileges and Immunities Clause claims; and
 - iv. The Omnibus Crime Control and Safe Street Acts of 1968 claim; and

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
14 days after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
17 shall be served on all parties and filed with the court within seven (7) days after service of the
18 objections. Failure to file objections within the specified time may waive the right to appeal the
19 District court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951
20 F.2d 1153, 1156-57 (9th Cir. 1991).

21 | Dated: December 20, 2024

CAROLYN K. DELANEY
CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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